

Exhibit 4

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In Re: Pharmaceutical Industry Average MDL No. 1456
Wholesale Price Litigation Civil Action No.
01-CV-12257-PBS

This Document Relates to State of
Nevada v. Abbott Laboratories, et al.,
CA NO. 02-CV-00260-ECR (Nevada I), and

State of Nevada v. American Home Products
et al., CA No. 02-CV-12086-PBS (Nevada II)

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DEPOSITION OF

PHILLIP NOWAK

Thursday, December 22, 2005

Carson City, Nevada

APPEARANCES: (See separate page)

Reported by: Lesley A. Clarkson, CCR #182
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1 Covington and Burling in Washington, D.C., along with my
2 colleague here, Shankar Duraiswamy. Our firm represents
3 GlaxcoSmithKline, which is one of the defendants in this
4 action.

5 Could you please state and spell your name for the
6 record.

7 A My name is Phillip with two ls. Last name is
8 Nowak, N-o-w-a-k.

9 Q What is your business address?

10 A It is 1100 East William Street, Carson City,
11 Nevada, 89701, and it's Suite 122.

12 Q Have you ever been deposed before?

13 A Yes, I have.

14 Q On how many occasions?

15 A Oh, I'd say a handful. Maybe three or four, off
16 the top of my head.

17 Q What's the first such occasion that you can
18 recall?

19 A When I worked, I was employed by Bank of America,
20 and in my capacity as the national manager for the student
21 loan product, the bank was party to litigation involving
22 some secondary market transactions, at which I was a named
23 defendant as I recall.

24 Q And when was that, approximately?

25 A That would be approximately 1988.
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1 MR. LITOW: Back on the record.

2 BY MR. LITOW:

3 Q During your time as deputy administrator, did you
4 perform any functions relating to prescription drug
5 reimbursement?

6 A Not directly.

7 Q And then what position did you hold after deputy
8 administrator?

9 A It was as, a name change, but basically in
10 function responsibility for the managed care activities of
11 the division.

12 Q And when did you assume that position?

13 A That would have been in the latter part of 2000.

14 Q And that's your current position?

15 A Yes.

16 Q Does it have any other responsibilities besides
17 oversight of the managed care portion of the Medicaid
18 program?

19 A Yes, it does.

20 Q And what are those responsibilities?

21 A It's responsible for, from a programmatic
22 standpoint, for dental services, whether or not managed
23 care, and for transportation, whether or not under a managed
24 care model. And then the medical managed care extends to
25 the, geographically speaking, to the urban areas of the

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1 state for the Medicaid, certain subsets of the Medicaid
2 population, and for the Nevada checkup population.

3 Q And who was responsible for overseeing the managed
4 care program before you took that position?

5 A Immediately prior there was a, it was vacant.
6 Going back, I think I would be correct in saying the last
7 person prior was Lorrie England.

8 Q Do you know approximately when she was at
9 Medicaid?

10 A Not precisely. I'm recalling I think -- well,
11 managed care as a direction was effective at some point in
12 1998. I'm not sure when. So she would have, I don't
13 believe, been in place, could not have been in place longer
14 than about a year or year and a half, perhaps, if my numbers
15 are right.

16 Q Which third parties does the state contract with
17 to provide managed care services for Medicaid beneficiaries?

18 A With two different health maintenance
19 organizations. One being Health Plan of Nevada, and the
20 other being, the parent being IMX companies, or they do
21 business, Nevada Care.

22 Q Is Health Plan of Nevada the same as Nevada Care?

23 A No, Health Plan of Nevada is a wholly owned
24 subsidiary of Sierra Health Services, which is a publicly
25 traded company.

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1 document, please.

2 A (Reviewing document.)

3 Okay.

4 Q What is this document?

5 A I would describe it as an informational document
6 and also a directive document as it pertains to a document,
7 and document handling.

8 Q Have you seen this document before?

9 A Yes, I have.

10 Q And when did you receive it?

11 A This is the one I was referring to which I
12 couldn't recall the date on, which is when you asked me
13 about familiarity with the action.

14 Q This is the e-mail, this is the document --

15 A This is the document --

16 Q -- you reviewed during your meeting with Miss
17 Breckenridge yesterday; is that correct?

18 A Yes. And in terms of documents, I had seen it
19 prior to to. This is the one I was thinking of.

20 Q Have you ever received an e-mail or a document
21 like this before regarding this case?

22 A Other than this one?

23 Q Other than this one.

24 A No, nothing.

25 Q I just direct your attention to the first
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1 sentence, please.

2 A Okay.

3 Q "As many of you are aware, the state of Nevada is
4 involved in litigation entitled State of Nevada v. American
5 Home Products Corp., et al. This lawsuit is also known as
6 the Average Wholesale Price Litigation or AWP litigation."

7 Do you see that?

8 A Yes, I do.

9 Q When did you first become aware of this action?

10 A To be conscious of it, this was the first I had
11 heard of it.

12 Q So you weren't aware of it in 2002, for example,
13 when it was filed?

14 A No.

15 Q I want to direct your attention to the second
16 paragraph, the first bolded sentence.

17 A Okay.

18 Q Which states, "It is extremely important that any
19 documents pertaining to the litigation are identified,
20 separated from other files and protected."

21 Do you see that?

22 A Yes, I do.

23 Q Prior to receiving this e-mail had you ever
24 received that particular instruction before in relation to
25 this case?

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1 A No, I had not.

2 Q I direct your attention to the next sentence.

3 "All destruction of records pertaining to the lawsuit must
4 be stopped until the legal action is resolved."

5 Do you see that?

6 A Yes, I do.

7 Q Prior to receiving this e-mail had you ever
8 received that specific instruction before relating to this
9 case?

10 A No, I had not.

11 Q I'll direct your attention to the sixth paragraph,
12 please.

13 A Okay.

14 Q The last sentence of that paragraph, which states,
15 "Again, most of you have seen this document before as you
16 have been involved in searching for and producing documents
17 responsive to the questions and requests from your
18 department's files, your files or the files of others."

19 Do you see that?

20 A Yes, I do.

21 Q Did you search your files for documents responsive
22 to defendant's documents request?

23 A The only request that I received was specific to
24 copies of the contracts with the managed care organizations
25 and the, what was -- well, a contract which did apply to who

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1 was then our fiscal agent, Anthem Blue Cross Blue Shield.

2 And those are the only requests I received.

3 Q Did you provide copies of the contracts with the
4 managed care organizations to whoever requested them?

5 A Yes, I did.

6 Q Do you know if the files for those individuals who
7 work under you were searched for documents pertaining to
8 this litigation?

9 A I don't know if they were.

10 Q I would like to direct your attention to the next
11 page, please. I'm just going to go through these categories
12 and see whether you have any documents that would fit within
13 them.

14 A Sure.

15 Q Do you have any documents in your files relating
16 to the state's reimbursement or expenditures for
17 pharmaceutical products or dispensing fees?

18 A I might have in, specifically because we have in
19 our unit a copy of the Medicaid policy manual or services
20 manual as it's referred to. And just on a general level I'm
21 aware that there's a pharmacy chapter. That's the only one
22 that comes to mind.

23 Q How about the next category. Do you have any
24 documents relating to the pricing for the reimbursements or
25 expenditures, AWP, MAP, MAC, WAC, EAC, Best Price or any

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1 periodically from Kaiser Foundation, they publish a lot of
2 things about dual eligibles, and so that kind of
3 communication, yes.

4 Q What would you do with those e-mails when you get
5 them?

6 A Usually, they typically provide an abstract, and
7 then if you want the full report you can print it or not. I
8 typically just read the abstracts, and absent any particular
9 interest to managed care or something like that, I probably
10 just delete them.

11 Q What about documents relating to provider
12 payments?

13 A Yes, we would have, we do have correspondence in
14 that regard, or documents in that regard.

15 Q What type of documents would those be?

16 A A typical, I mean example I'm thinking of is a
17 provider may either directly or indirectly complain to the
18 division about reimbursement. In some cases it involves
19 behavior or alleged behavior by the managed care plan, we
20 rendered a service, you didn't pay us, or conversely, you
21 didn't pay us timely, you didn't pay us enough, or whatever.
22 In other cases it's, you know, more complicated situation.
23 But typically correspondence related to payments to
24 providers or not.

25 Q And what do you do with that correspondence after
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1 you receive it?

2 A Yeah. Those are, anything of that nature is
3 retained, in that either, whether it's for whatever reason
4 came directly to me or to my area, or what's more typically
5 the case, it will come to the division, people just send it,
6 you know, wherever they think they can find a point of
7 entry. And then for some of these they are actually logged.
8 If they have responses due back through the administrator or
9 through some other channel, and so those are, whether in a
10 reader file or retained file, in some fashion, whether in
11 combination, electronic or paper, those are maintained.

12 Q What about documents related to communication with
13 the National Association of Medicaid Fraud Control Units,
14 National Association of Attorneys General or PAL?

15 A No.

16 Q How about documents related to responses to
17 federal or state assessment, study, analysis, review or
18 audit concerning reimbursement of pharmaceutical products,
19 definitions or methods of concerning EAC, use of AWP or
20 dispensing fees?

21 A No.

22 Q How about documents relating to Ven-A-Care of the
23 Florida Keys?

24 A No.

25 Q Prior to receiving this particular e-mail from
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1 Mr. Duarte, had you taken any measures to preserve documents
2 that might be in your possession that would fit within the
3 categories listed here?

4 A Not -- not specifically because of the directive,
5 but the directive fits in terms of what we would do anyway
6 for the areas I indicate where we do occasionally or
7 frequently retain correspondence. So I guess we didn't have
8 to do anything differently because we would retain it
9 anyway.

10 Q How long would it be retained for? In perpetuity
11 or --

12 A Pretty much.

13 Q So they would still all, you would still have all
14 the correspondence, correct?

15 A Yes.

16 MR. LITOW: I'm going to take about a five, ten
17 minute break now, see what additional questions we have.

18 (Recess taken.)

19 MR. LITOW: Go back on the record now.

20 BY MR. LITOW:

21 Q I want to go back for a moment to our discussion
22 that we had of the rate that Nevada pays the managed care
23 organizations. Do you recall that discussion?

24 A Yes, I do.

25 Q I believe you testified that, let me know if I'm
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1 various managed care organizations. Do you recall that?

2 A Yes.

3 Q When did you receive that request? Was it more
4 than a month ago, two months?

5 A More than a month ago.

6 Q More than six months ago?

7 A No, I don't think so.

8 Q Do you recall ever seeing a document entitled
9 Monthly Case Report that lists various cases that Nevada
10 Medicaid is involved in, or cases in litigation?

11 A No.

12 Q I'd like to go back to some of the discussion we
13 had earlier about the department of corrections,
14 specifically the purchasing of drugs through Bergin
15 Brunswick.

16 A Yes.

17 Q Do you know whether the department of corrections
18 received discounts or rebates from Bergin Brunswick in
19 connection with their purchasing of drugs?

20 A I really don't know.

21 Q Do you know who would know that, which particular
22 position at corrections would know that?

23 A I guess I'd speculate it would be the chief
24 pharmacist would be the closest to it.

25 MR. LITOW: We have no further questions at this
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1 time.

2 MS. BRECKENRIDGE: Phone? Counsel?

3 MR. LITOW: Anybody have questions?

4 S SPEAKER: No.

5 S SPEAKER: No questions.

6 MS. BRECKENRIDGE: We have no questions.

7 MR. LITOW: We are finished. Thank you.

8 (2:53 p.m., deposition concluded.)

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